

**REGULAR**

**NUMBER: 38.816**

**TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS  
AMENDING CHAPTER 10 OF TITLE XI OF THE MILPITAS MUNICIPAL  
CODE RELATING TO THRIFT STORES**

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_ and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

## **RECITALS AND FINDINGS:**

**WHEREAS**, Title XI, Chapter 10, Table XI-10-5.02-1 of the Milpitas Municipal Code sets forth the commercial zone uses; and

**WHEREAS**, Title XI, Chapter 10, Section XI-10-5.04 of the Milpitas Municipal Code sets forth special development standards for Commercial Zoning Districts; and

**WHEREAS**, thrift stores are currently not permitted in the C-1, Neighborhood Commercial Zoning District and the operator currently operates a similar use across the street at 91 S. Abbott Avenue and wishes to relocate operations into a larger, more modern building space; and

**WHEREAS**, currently, thrift store uses are not defined in the Zoning Definitions; and

**WHEREAS**, on April 1, 2014 an application was submitted by Reid Lerner on behalf of Goodwill of Silicon Valley (Goodwill) requesting to amend the text within the Zoning Ordinance to conditionally permit thrift store uses within the Neighborhood Commercial Zoning District; and

**WHEREAS**, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project categorically exempt under CEQA. The project is categorically exempt from further CEQA review under Section 15301 of the CEQA Guidelines, Existing Facilities, because the project does not result in a change of use, rather it maintains a commercial use for the existing building. The project is also exempt from further CEQA review under Section 15061(b)(3) of the CEQA Guidelines, Review for Exemption, since the project has no potential to cause a significant effect on the environment, since the project includes a commercial retail use occupying a vacant retail tenant space and no changes are proposed to alter the size, purpose, and capacity of the existing commercial building. Conditionally permitting retail thrift stores, subject to certain performance standards, in areas designated for similar retail uses also meets the intent of the zoning district to provide for the provision of commercial goods and services to nearby neighborhoods.

**NOW, THEREFORE**, the City Council of the City of Milpitas does ordain as follows:

### **SECTION 1. RECORD AND BASIS FOR ACTION**

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

### **SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE \_\_\_\_\_**

Section XI-10-2.03 entitled “Definitions” of the Milpitas Municipal Code is hereby amended to add the following definition to read as follows:

“Thrift Store” means any profit or nonprofit business, organization, group or otherwise that engages in or specializes in the sale or resale of previously owned or used goods and merchandise from an area greater than 25 percent of the total floor area devoted to retail sales and whose goods and merchandise are donated or primarily donated. A specialty retail store that sells used goods or merchandise not donated for sale, including but not limited to used record stores, used book stores, used furniture stores, and sports trading card stores, shall not be considered a Thrift Store for the purpose of this Chapter.

Table XI-10-5.02-1 entitled “Commercial Zone Uses” of the Milpitas Municipal Code is amended to read as follows:

**Table XI-10-5.02-1  
Commercial Zone Uses**

Use	CO	C1	C2	HS	TC
<b>1. Commercial Uses</b>					
Alcoholic beverage sales	C <sup>6</sup>	C	C	NP	C
Art/photography studio or gallery	NP	P	P	P	P
Bookstore	NP	P	P	P	P
Commercial services <sup>1</sup>	P	P	P	NP	P
Funeral home or mortician	NP	NP	C	C	NP
Furniture sales	NP	P	P	P	P
Grocery store (supermarkets)					
Within 1,000 ft. of residential zone	NP	C	C	C	C
Not within 1,000 ft. of residential zone	NP	P	P	P	P
Home improvement (hardware, blinds, interior decorating, etc.)	NP	P	P	C	P

Not fully enclosed operation	NP	C	C	C	C
Household appliance store <sup>2</sup>	NP	NP	P	P	NP
Small appliance repair	NP	NP	MCS	P	NP
Large appliance repair	NP	NP	NP	P	NP
Janitorial services	NP	NP	P	P	NP
Newsstand					
Indoor	P	P	P	NP	P
Outdoor	C	C	C	NP	C
Nursery (flower or plant)					
Indoor	NP	NP	P <sup>2</sup>	P	P
Outdoor	NP	NP	C	P	NP
Office supply sales (stationary, equipment)	P	P	P	P	P
Paint and wallpaper stores	NP	NP	P	P	P
Pawnshops	NP	NP	C	NP	NP

Pet stores	NP	NP	P	P	P
Printing (newspaper, publishing)	NP	NP	P	P	P
Rentals (medical supplies, costumes, party equipment, office equipment)	NP	NP	P	P	P
Retail stores, general merchandise	NP	P	P	NP	P
Tanning salon	NP	NP	P	NP	P
Thrift store <sup>3</sup>	NP	<u>C</u> <del>NP</del>	P	P	P
Tobacco shop	NP	C	C	NP	C
<b>2. Entertainment and Recreation</b>					
Adult business <sup>4</sup>	NP	NP	NP	P	NP
Bowling alley	NP	NP	P	P	P
Commercial athletic facilities					
Indoor	NP	C	P	P	P
Outdoor	NP	NP	NP	C	NP
Motion picture theater (See 7 below)					

Recreation or entertainment facility	NP	C	C	C	C
Shooting range, indoor	NP	NP	NP	C	NP
<b>3. Health and Veterinarian Uses</b>					
Animal grooming (no boarding)	NP	P	P	P	P
Hospital	C	NP	C	C	C
Kennel	NP	NP	C	NP	NP
Massage establishment	NP	NP	C	C	C
Medical and dental office	P	P	P	NP	P
Medical and dental clinic	P	C	C	NP	P
Medical support laboratories	P	C	C	C	C
Optician and optometrist shop	P	P	P	NP	P
Pharmacy or drug store	NP	P	P	P	P
Sauna and steam bath	NP	NP	NP	P	NP
Veterinary clinic	NP	NP	P	P	P

#### 4. Industrial Uses <sup>5</sup>

Assembly from pre-processed materials	NP	NP	C	NP	NP
Commercial fueling facility	NP	NP	NP	C	NP
Commercial laboratory	NP	NP	C	P	NP
Contractor's yards and offices	NP	NP	C	C	NP
Disinfection and extermination business	NP	NP	C	P	NP
Dry cleaning plant	NP	NP	NP	P	NP
Food storage locker	NP	NP	NP	P	NP
Landscape contractor	NP	NP	C	P	NP
Lumberyards	NP	NP	C	C	NP
Mini-storage complex	NP	NP	C	C	NP
Plumbing, metalworking, glassworking or woodworking	NP	NP	C	C	NP
Research & development	NP	NP	C	NP	NP
Sign sales and fabrication (Electric and neon sign, sign painting)	NP	NP	C	P	NP

Warehousing and wholesale	NP	NP	C	NP	NP
<b>5. Lodging</b>					
Hotel and motel	NP	NP	C	C	C
<b>6. Professional Offices, Financial Institutions and Related Uses</b>					
Automatic Teller Machines (freestanding) <sup>6</sup>	NP	P	P	P	P
Financial institutions (banks, savings and loans, etc.)	P	P	P	P	P
General offices (administrative and business services, real estate, travel agencies, etc.)	P	P	P	P	P
<b>7. Public, Quasi-Public and Assembly Uses</b>					
Auction hall	NP	NP	C	C	C
Child care					
Child care center	C	C	C	C	C
Day care school	C	C	C	C	C
Large family child care home	NP	NP	NP	NP	C
Small family child care home	NP	NP	NP	NP	C



Club or social organization, religious assembly	C	C	C	C	C
Cultural center	NP	NP	C	C	C
Educational institutions					
Schools, private (-elementary, middle, high)	NP	NP	C	NP	C
Trade and vocational school	C	NP	P	P	C
Farmer's market (not including flea market)	NP	C	C	C	C
Instruction					
Group <sup>8</sup>	MCS	MCS	MCS	MCS	MCS
Private	P	P	P	P	P
Motion picture theater					
Indoor	NP	C	C	C	C
Outdoor	NP	NP	NP	C	NP
Parking facility, storage garage	NP	P	P	C	C
Public utilities	C	C	C	C	C

Transportation facility (taxi, limousine, etc.)	NP	NP	C	C	C
<b>8. Restaurants or Food Service</b>					
Banquet hall	NP	NP	C	C	C
Bar or nightclub	NP	NP	C	C	C
Catering establishment	NP	NP	P	P	P
Restaurants	C <sup>7</sup>	P	P	P	P
With live entertainment/dancing	NP	NP	C	C	C
With drive-in or drive-through	NP	C	C	C	C
With ancillary on-premise beer & wine with no separate bar	NP	MC	PMC	MC	MC
<b>9. Residential Uses</b>					
Caretaker (in conjunction with contractor's yard or mini-storage complex)	NP	NP	C	C	NP
Emergency shelters <sup>9</sup>	NP	NP	NP	P/C	NP
Residential dwellings (between 1 and 40 d.u. per gross acre)	NP	NP	NP	NP	C
Single-room occupancy residences <sup>10</sup>	NP	NP	NP	C	NP

<b>10. Vehicle Related Uses</b>					
Auto repair (tire, oil change, smog check, etc.)	NP	NP	C	C	NP
Auto sales and rental, outdoor (new and used cars, RV and truck)	NP	NP	C	C	NP
Auto broker (wholesale, no vehicles on site)	MCS	MCS	MCS	MCS	MCS
Car wash	NP	NP	C	C	NP
Service stations (with or without repair or retail) <sup>11</sup>	C	C	C	C	C
Drive through uses (restaurants, pharmacies, etc.)	NP	C	C	C	C
<b>11. Unclassified Uses</b>					
Accessory structures <sup>12</sup>	P	P	P	P	P
Model home complex <sup>13</sup>	NP	NP	NP	NP	P
Mortuary or crematory	NP	NP	NP	C	NP
Radio or television station	NP	NP	C	P	NP
Temporary seasonal sales <sup>14</sup>	NP	P	P	P	P

<sup>1</sup> Refer to the definition for "Commercial Services" in Section 2, Definitions, of this Chapter.

<sup>2</sup> Provided that all incidental equipment and supplies, including fertilizer and empty cans, are kept within a building.

<sup>3</sup> Refer to XI-10-5.04, Commercial Zone Special Development Standards, of this Chapter.

<sup>4</sup> In accordance with the Title III, Chapter 4, Adult Business Ordinance, and Subsection 13.04, Adult Businesses, of this Chapter.

<sup>5</sup> For conditionally permitted uses, refer to Subsection 57.04(C) (9), Certain Industrial Uses within Commercial Districts, of this Chapter.

<sup>6</sup> Refer to Subsection 57.03, Site Development Permits and Minor Site Development Permits, of this Chapter.

<sup>7</sup> When intended to serve the occupants and patrons of the permitted use (office, etc.) and conducted and entered from within the building and provided there is no exterior display of advertising.

<sup>8</sup> Refer to Subsection 5.02-1, Commercial Zone Special Uses, of this Section.

<sup>9</sup> Refer to XI-10-13.14, Special Uses, Emergency Shelters, of this Chapter.

<sup>10</sup> Refer to XI-10-13.13, Special Uses, Single Room Occupancy Residences, of this Chapter.

<sup>11</sup> Refer to Subsection XI-10-6.02-2, Special Uses, of this Chapter, for standards. Service stations shall follow the "General development policy: Gasoline service stations, and automotive service centers" adopted by the City Council on December 19, 1995.

<sup>12</sup> Not including warehouses on the same site as the permitted use.

<sup>13</sup> No tract sign shall be permitted within 600 feet of a Santa Clara County Expressway.

<sup>14</sup> Refer to Section 13.11, Temporary Uses and Structures, of this Chapter.

Section XI-10-5.04 entitled "Commercial Zone Special Development Standards" is hereby amended to add the following provision to read as follows:

C. Neighborhood Commercial (C1) Zone

Thrift stores shall comply with each of the following standards:

1. Signage prohibiting dumping of merchandise during non-business hours shall be installed in conspicuous locations to the satisfaction of the Planning Director indicating penalties and fines for such activity. Signage should include daytime collection hours for donated goods.
2. A designated area inside the building shall be established for the receipt, sorting and processing of goods. Donated goods shall be accepted only inside the building and during regular business hours, no donated goods shall be left outside. Loading and unloading must take place in a designated area that shall be cleared, cleaned and maintained before closing of business each day
3. The storefront windows shall be permanently maintained as displays of merchandise in a professional and attractive manner (i.e., unsightly clothing racks and displays shall not be placed adjacent to the windows.
4. Any goods or materials left outside of the store overnight shall be removed immediately upon the thrift store opening the next business day.

- 5. Outdoor storage or display of donated goods or merchandise shall not be permitted.
- 6. The subject property shall be maintained free of trash, debris, any all other goods at all times.
- 7. Thrift stores shall not be located closer than five hundred (500) feet from another thrift store.

### **SECTION 3. SEVERABILITY**

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

### **SECTION 4. EFFECTIVE DATE AND POSTING**

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.